

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHELMAN-CANCELLIERE IRON WORKS,
INC.

Plaintiff

-against-

KISKA CONSTRUCTION CORPORATION
U.S.A.,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, EDNY.
2002 Civ.
FEB - 6 2003
BROOKLYN OFFICE

Trial By Jury Is
Demanded

TRAGER, J.

TRAGER, J.

Plaintiff Michelman-Cancelliere Iron Works, Inc. ("Michelman"), by its attorneys
Ross & Cohen, LLP, as and for its Complaint against Defendant Kiska Construction
Corporation - U.S.A. ("Kiska") respectfully alleges as follows:

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. Section 1332(a)(1) as this action is between citizens of different States and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.
2. Venue in this action is proper in the Eastern District of New York pursuant to Title 28 U.S.C. Section 1391(a)(1), because it is the judicial district where the Defendant resides.

THE PARTIES

3. Michelman is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal place of business located at 7230 Beth-Bath Pike, Bath PA 18014; M and is licensed to do business in the State of New York.

4. Upon information and belief, Defendant Kiska was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business located at 18-10 Whitestone Expressway, Whitestone, N.Y. 11357.

FIRST CLAIM FOR RELIEF

5. On or about August 6, 1998, Michelman and Kiska entered into a written contract (the "Contract") whereby, for the sum of \$4,258,735, Michelman agreed to furnish and deliver materials in connection with a construction project known and described as Marine Parkway Bridge Deck Replacement, Triborough Bridge and Tunnel Authority Contract No. MP-01 (the "Project"). Michelman begs leave to refer to the Contract on the trial of this action and incorporates same herein as if fully set forth at length.

6. During the course of the Project, Kiska directed Michelman to furnish materials outside the scope of the contract in the sum of \$1,900,201.58.

7. Michelman has provided all of the materials that it was required to provide,

pursuant to the Contract and the directives by Kiska for the extra materials.

8. By reason of Michelman's full performance of all the terms and conditions of the Contract and the extra work, Kiska became indebted to Michelman for the agreed to sum of \$6,158,936.58.

9. Although Michelman has made due demand on Kiska for payment of \$6,158,936.58, only \$5,274,989.95 has been paid to Michelman, leaving the sum of \$883,946.63 due and owing from Kiska to Michelman.

SECOND CLAIM FOR RELIEF

10. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through and including "4" with the same force and effect as if fully set forth at length herein.

11. Between in or about August 1998 and April 2002, at the special instance and request of Kiska, Michelman furnished certain materials in connection with a construction project known and described as Marine Parkway Bridge Deck Replacement, Triborough Bridge and Tunnel Authority Contract No. MP-01, having a fair and reasonable value of \$6,158,936.58.

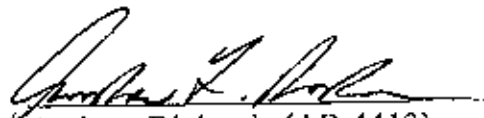
12. Although Michelman made due demand on Kiska for payment of \$6,158,936.58, only \$5,274,989.95 has been paid to Michelman, leaving the sum of \$883,946.63 due and owing from Kiska to Michelman.

WHEREFORE, Plaintiff Michelman-Cancelliere Iron Works, Inc. demands

judgment against Defendant Kiska Construction Corporation - U.S.A., on each count of the Complaint in the amount of \$883,946.63 together with interest thereon, the costs and disbursements of this action, and such other and further relief as this Court may deem just and proper.

Dated: New York, New York
February 6, 2003

ROSS & COHEN, LLP
Attorneys for Plaintiff
Michelman-Cancellicre Iron Works

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